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Frank-Martin Wille

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EXAMINER

DAGER, JONATHAN M

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/593,458	Applicant(s) WILLE ET AL.	
	Examiner JONATHAN M. DAGER	Art Unit 3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13 and 15-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 9 filed 13 January 2010, with respect to the rejection of claims 4, 7, and 32 under 35 U.S.C. 112, 2nd paragraph have been fully considered and are persuasive due to amendment. Therefore, the rejection of claims 4, 7, and 32 under 35 U.S.C. 112, 2nd paragraph has been withdrawn.

Subsequently, the prior art rejections of all claims dependent therefrom are withdrawn.

2. Applicant's arguments, see page 9, filed 13 January 2010, have been fully considered but they are not persuasive.

The Applicant has contended that Kikkawa (US 2002/003781) has not anticipated the embodiments of claims 1, 11, 32, and 43 under 35 U.S.C. 102(b), and that the prior rejection of the claims should therefore be withdrawn.

The Examiner respectfully disagrees; regarding claims 1, 11, 32, and 43, Kikkawa has disclosed a system and method relating to a multiplex communication system, including a data relay unit which has a plurality of send/receive (SR) sections. Communication lines are connected to the respective SR sections, and nodes are connected to the communication lines. The data relay unit further includes a destination table and header tables. In the data relay unit, a data frame sent from a node is received by one of the SR sections, and the SR sections which ought to send the data frame are identified by referring to the destination table. A header according to the appropriate communication protocol is formed by referring to one of the header tables. Further the data frame including the formed header is formed and sent to the destination

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node by the identified SR sections. When nodes are added or eliminated, this system can be reconfigured only by modifying or replacing the destination table and the header tables (abstract). Further, Kikkawa has disclosed that the invention is drawn toward the field of multiplex communications in vehicles (para 0002-0009).

Thus, Kikkawa has disclosed a communications system for a vehicle for transmission of information relating to the operation of the vehicle from a sending control device to a receiving control device (SR), the communication system comprising an interface (data relay unit, also see para 0057, fig. 7 index 4a) for input or output of the information relating to the operation of the motor vehicle wherein communication is possible by way of the interface.

Kikkawa also discloses that preferably, the data relay unit includes a plurality of header tables corresponding to different communication protocols. In this case, the data relay unit can relay data received from a node connected to a communication line which employs a communication protocol to a node connected to a communication line which employs another communication protocol (para 0013).

Thus, the interface of Kikkawa discloses that the interface processes all data by means of a protocol.

Kikkawa discloses that the nodes belonging to the same network communicate each other by exchanging data frames formed according to the communication protocol employed by the network. Each data frame includes not only a data body but also a header including a data type field so that the destination node of the data frame can use the data body. The data types are 'engine speed', 'vehicle speed', 'opened/closed state of the doors' or the like. The destination

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node receives the data frame, and then determines from the content of the header whether the data body includes data required for the node or what type of data the data body includes (para 0028).

The communication lines 21-24 are connected to the data relay unit 4. The data relay unit 4 is provided to relay data received from a node (source node) 311-343 to another node (destination node) 311-343 belonging to another network 11-14 than the network to which the source node belongs (para 0033).

Thus, the communication protocol does include an operation field for identification of the task to be performed by means of the information relating to operation of the vehicle. This is provided in inter-network communications, as well as communications between nodes in outside networks.

Therefore, the Examiner maintains the rejection of independent claims 1, 11, 32, and 43 under 35 U.S.C. 102(b) as anticipated by Kikkawa for those reasons cited above, and those mentioned in the prior office action, which is incorporated herein.

2a. It is noted that the Applicant has contended that Kikkawa does not anticipate the embodiment of claims 1, 11, 32, and 43 wherein a protocol comprises an operating field, the operating field identifying a task to be performed by means of the information relating to operation of the vehicle.

The Examiner respectfully disagrees; as cited above, Kikkawa discloses that the nodes belonging to the same network communicate each other by exchanging data frames formed according to the communication protocol employed by the network. Each data frame includes

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not only a data body but also a header including a data type field so that the destination node of the data frame can use the data body. The data types are `engine speed`, `vehicle speed`, `opened/closed state of the doors` or the like. The destination node receives the data frame, and then determines from the content of the header whether the data body includes data required for the node or what type of data the data body includes (para 0028).

The communication lines 21-24 are connected to the data relay unit 4. The data relay unit 4 is provided to relay data received from a node (source node) 311-343 to another node (destination node) 311-343 belonging to another network 11-14 than the network to which the source node belongs (para 0033).

Thus, it is disclosed by Kikkawa that the interface can interpret a protocol which includes an operation field (data type, e.g. engine speed, equivalent to that which is claimed) which identifies a task to be performed by means of the information relating to operation of the vehicle. In other words, the interface receives the message in a specific protocol format, translates the operation field into a data command, and relays the information to the relevant network(s), and ultimately node(s). Therefore, the Examiner maintains the rejection.

Even if Kikkawa did not anticipate said embodiments, which is NOT an admission by this office, it is still noted that claims 1, 11, and 32 employ multiple examples of intended use in an apparatus claim (see below).

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3. Although not specifically argued, claims 2-9, 15-22, and 24-48 remain rejected under 35 U.S.C. 102(b) as anticipated by Kikkawa for those reasons cited above, and those mentioned in the prior office action, which is incorporated herein.

4. Although not specifically argued, claims 10 and 23 remain rejected under 35 U.S.C. 103(a) as obvious in view of the combination of Kikkawa and Boesinger for those reasons cited above, and those mentioned in the prior office action, which is incorporated herein.

Remarks

Applicant is advised that should **claim 41** be found allowable, **claim 42** will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

It is still noted that claim 1, 11, 13, 24-29, 31, 32, and 39 contain multiple statements of intended use or field of use (e.g. “for transmission”, “wherein...a bus protocol is transmitted”, “for controlling”, etc.). These statements of intended use or field of use, and "wherein" clauses, are essentially method limitations. Thus, these claims, as well as other statements of intended use, do not serve to patentably distinguish the claimed structure over that of the reference.

See MPEP § 2114 which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim.

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Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions.

Apparatus claims cover what a device is not what a device does.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Additionally, the terms "configured to" or "arranged to" are considered to be structurally modified statements and are not intended use. Claims amended to include the above listed language may patentably distinguish themselves structurally.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5a. Claims 13 and 15-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13, 15, 16, 22 and 23 all recite dependence to claim 12. There is insufficient antecedent basis for this limitation in the claim in that claim 12 has been cancelled.

Subsequently, claim 21 is rejected under identical grounds due to dependence on its rejected base claim 16.

Claims 17-19 all recite dependence to claim 14. There is insufficient antecedent basis for this limitation in the claim in that claim 14 has been cancelled.

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Subsequently, claim 20 is rejected under identical grounds due to dependence on its rejected base claim 19.

Additionally, claims 24-29 are replete with the term “can comprise”, which precedes the functional/structural limitations of the structure. These functional limitations shall be given no patentable weight; language that suggests or makes optional does not require steps to be performed **or does not limit a claim to a particular structure**, and does not limit the scope of a claim or claim limitation. Thus, since the scope of the claims cannot be ascertained, claims 24-29 are rejected under 35 U.S.C. 112, 2nd paragraph. See MPEP 2106.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN M. DAGER whose telephone number is (571)270-1332. The examiner can normally be reached on 0830-1800 (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JD
02 April 2010

/JACK KEITH/
Supervisory Patent Examiner, Art Unit 3663